such fault as will render the employer liable for death of, or injury to, the child irrespective of negligence, provided that such wrongful employment is the proximate cause of the injury. There is no reason why this doctrine should not be applied to the Workmen's Compensation Acts as it was in this case, and the father denied a recovery for his fault in employing his child contrary to law. It seems probable that the decisions under the Workmen's Compensation Act will follow the common law doctrine that the "negligence" is that of the employer rather than that of the child, and thus permit a recovery by the child, or, in the event of his death, by his administrator.[3] The court recognized this in the principal case by a dictum to the effect that if the child had been suing his employer, instead of the father suing the commission, he would have recovered, and this view would seem to be correct.

But in order to support a recovery in such a case, an employment of the child must be found. In the principal case the court held that the statute contemplated an "actual contractual relation between the parties. That is, an agreement to labor for an agreed wage or compensation," or, in other words, an express, as opposed to an implied, contract, and the court accordingly held that as the parties said nothing about any wage or compensation there was no express contract of employment and therefore could be no recovery. The relation of master and servant, which is obviously that contemplated by the statute, exists when one person is willing to work for another from day to day, and that other person desires the labor.[4] This is especially true because an employee, in the absence of an express agreement as to wages, can recover on an implied promise to pay.[5] A more valid objection to finding an employment here would be on the ground of relationship of the parties, but in reference to this the Washington courts hold the liberal view that an implied contract is sufficient basis for an action for wages.[6] The same view is adopted by the California decisions.[7] It is therefore submitted that the statute does not sustain the ruling that recovery can only be had when there is an express contract between the parties.

C. W. S.

MINING LAW: KNOWN LODES WITHIN PLACERS.—The question as to what constitutes a known lode within a placer under

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891, 7 L. R. A. (N. S.) 335; Queen v. Dayton Coal & Iron Co. (1895), 95 Tenn. 458, 32 S. W. 460, 49 Am. St. Rep. 935, 30 L. R. A. 82.

[3] Marino v. Lehmaier (1903), 173 N. Y. 530, 66 N. E. 572, 61 L. R. A. 811, affirming 62 App. Div. 43, 70 N. Y. Supp. 790; Wise v. Morgan (1898), 101 Tenn. 273, 48 S. W. 971, 44 L. R. A. 548.

[4] Frank v. Herold (1901), 63 N. J. Eq. 443, 52 Atl. 152.

[5] White v. Dougherty (1910), 1 Boyce (Del.) 355, 76 Atl. 609.

[6] Morrissey v. Faucett (1902), 28 Wash. 52, 68 Pac. 352; Hodge v. Hodge (1907), 47 Wash. 196, 91 Pac. 764, 11 L. R. A. (N. S.) 873.

[7] Friermuth v. Friermuth (1873), 46 Cal. 42; Crane v. Derrick (1910), 157 Cal. 667, 109 Pac. 31.

section 2333 Revised Statutes of the United States is an involved one and its proper solution has been difficult for the courts. As a result the decisions can not be entirely harmonized.

The case of Iron Silver Mining Company v. Reynolds[1] was one of the earliest on this subject. There the court laid down the rule that "knowledge of the existence of a lode or vein within the boundaries of a placer claim may be obtained from its outcrop within such boundaries; or from the developments of the placer claim previous to the application for the patent; or by tracing the vein from another lode; or perhaps from the general conditions and developments of mining ground adjoining the placer claim. It may also be obtained from the information of others who have made the necessary explorations to ascertain the fact."

During the same year the case of United States v. Iron Silver Mining Company[2] was decided, and the court laid down the stringent rule that "It is not enough that there may have been some indication by outcroppings on the surface of the existence of lodes or veins of rock in place bearing gold or silver or other metal, to justify their designation as 'known' veins or lodes. To meet that designation the lodes or veins must be clearly ascertained, and be of such extent as to render the land more valuable on that account, and justify their exploitation."

A few years later the case of Iron Silver Mining Company v. Mike Starr Company[3] arose where the court said "It is enough that it [the vein or lode] be known either to the applicant for the placer patent or known to the community generally, or else disclosed by workings and obvious to anyone making a reasonable and fair inspection of the premises for the purpose of obtaining title from the government. . . . . An applicant for a placer patent is chargeable with all that would be disclosed by a casual inspection of the surface of the ground or such a tunnel."

There was a strong dissenting opinion on the ground that "the mere indication or presence of gold or silver is not sufficient to establish the existence of a lode. The mineral must exist in such quantities as to justify expenditure of money for the development of the mine and the extraction of the mineral."

These three cases illustrate the fluctuation of opinion that has taken place. The first case lays down an exceedingly lenient rule, the second case is extremely strict, while the last cited case again reverts to the more lenient rule but with a strong dissenting opinion against such liberality.

The recent case of *Mason et al. v. Washington Butte Mining*

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[1] Iron Silver Mining Co. v. Reynolds (1887), 124 U. S. 374, 31 L. Ed. 466, 8 Sup. Ct. Rep. 598.

[2] U. S. v. Iron Silver Mining Co. (1888), 128 U. S. 673, 32 L. Ed. 571, 9 Sup. Ct. Rep. 195.

[3] Iron Silver Mining Co. v. Mike Starr Co. (1891), 143 U. S. 394, 36 L. Ed. 201, 12 Sup. Ct. Rep. 543.

Company[4] again recognizes the more stringent rule. Two quartz claims had been located covering the land in controversy prior to the date of application for placer patent made by a placer claimant of the same ground. The lode locators adversed the placer application but finally compromised the suit and allowed judgment to be rendered in favor of the placer locator. After the issuance of the placer patent, five new quartz claims were located by strangers to the earlier titles and embracing the ground in controversy, being a part of the patented placer claim involved in the earlier adverse suit. There were two questions before the court: (1) Whether the judgment in the adverse suit was *res adjudicata* in determining that there were no veins or lodes known to exist in the land at the time of the application for the placer patent; and, (2) whether the mere sinking of shafts on the early lode claims constituted such notice to the placer applicant that he may be said to have had or could be presumed to have had knowledge of an existing vein or lode within the boundaries of his placer claim, so as to except the same from the operation of the patent. The court answered both questions in the negative. In regard to the first it said, "the judgment had not the effect to determine that there were not within the ground covered by the placer claim, veins or lodes known to exist at the time of the application for the patent, and it has no bearing upon the question of validity of subsequent locations, the rights whereof depend on the question whether, at the time when the placer patent was applied for, there were known veins or lodes such as to be excluded from the grant of the patent."

As to the second question it laid down the rule that "before it can be held that veins or lodes are excluded from the grant of land included in a placer patent, it is not sufficient to show that the land does in fact contain valuable minerals, but it must be shown that at the time of the application for the patent, more has been discovered than the indications of mineral which would ordinarily sustain a lode location, and that it was at that time known to the applicant for the placer patent, or known to the community generally, or else disclosed by workings and obvious to any one making a reasonable and fair inspection of the premises, for the purpose of obtaining title from the government, that there was rock in place bearing minerals of such extent and value as would justify expenditures for the purpose of extracting them."

At one time it was customary for the land department to insert in all placer patents a clause excepting any vein or lode claimed or known to exist at the date of the placer patent. This has, however, been held to be an unwarranted extension of the statute by these officials, since the word "claimed" is not contemplated and

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[4] (May 4, 1914), 214 Fed. 32.

also because sometimes a year or more elapses between the date of the patent application and the date of the actual issuance of the patent.[5]

W. J. A.

MINING LAW: POLICE POWER OF STATE TO REGULATE MINES.—In the various states in which mining thrives, statutes have been enacted to preserve the health and promote the safety of persons working in and about, or in connection with the mines, and also for conserving the public safety, prescribing penalties for their violation. Reasonable regulations have been generally sustained as constitutional and as a valid exercise of the police power.

Two cases on this subject recently came before the Supreme Court of the United States, it being alleged in both that the statutes in question were unconstitutional as opposed to the fourteenth amendment of the federal constitution. In *Barrett v. State of Indiana,*[1] the court held that the statute of Indiana requiring entries into bituminous coal mines to be of a specified width, was within the police power of the state and constitutional. And in the case of *Plymouth Coal Company v. Commonwealth of Pennsylvania,*[2] the court held "that a statute of Pennsylvania requiring owners of adjoining coal properties to cause barrier pillars to be left of suitable width to safeguard employees is not unconstitutional either as depriving the owners of their property without due process of law or as denying them equal protection of the law, or because of the procedure and method prescribed for determining the width of such barrier or because it delegates the matter to an administrative board or does not provide for any appeal thereupon."

The court in both cases said that the business of coal mining is a dangerous business and therefore subject to regulation. This is in accord with the holding of the court in an earlier case, that of St. Louis Consolidated Coal Company v. Illinois,[3] where it was said "the regulation of mines and miners, their hours of labor, and the precautions that shall be taken to ensure their safety, health, and comfort, are so obviously within the police power of the several states, that no citation of authorities is necessary." But the police power cannot be put forward as an excuse for oppressive and unjust legislation.[4] As it was held in Barrett v. State of Indiana,[5] the legislature of the state is itself the judge of the means neces-

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[5] Sullivan v. Iron Silver Mining Co. (1891), 143 U. S. 431, 36 L. Ed. 214, 12 Sup. Ct. Rep. 555. Also see Burke v. So. Pac. Co. (1914), 234 U. S. 669, 34 Sup. Ct. Rep. 907, 921.

[1] (May 26, 1913), 229 U. S. 26, 57 L. Ed. 1050, 33 Sup. Ct. Rep. 692.

[2] (Feb. 24, 1914), 232 U. S. 531, 34 Sup. Ct. Rep. 359.

[3] (1902), 185 U. S. 203, 46 L. Ed. 872, 22 Sup. Ct. Rep. 616.

[4] Davidson v. New Orleans (1877), 96 U. S. 97, 24 L. Ed. 616. See also, Yick Wo v. Hopkins (1885), 118 U. S. 356, 30 L. Ed. 220, 6 Sup. Ct. Rep. 1064.

[5] (May 26, 1913), 229 U. S. 26, 57 L. Ed. 1050, 33 Sup. Ct. Rep. 692.